IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

Bail Appl..No. 5565 of 2007()

CRIME NO.305/07 OF EZHUKONE POLICE STATION

PETITIONER/ACCUSED

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1. SURESH KUMAR, S/O.KARUNAKARAN,
   CHELAKKAT PUTHEN VEEDU, KAREEPRA,
   NEDUVATHOOR, KOTTARAKKARA.

2. ANILKUMAR, S/O.KARUNAKARAN,
   DO. DO.

BY ADV. SRI.SAJU.S.A

RESPONDENTS: COMPLAINANT

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY P.P. SRI.JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/09/2007 ALONG WITH B.A.NOS.5567 & 5713/07 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. Nos.5565, 5567 & 5713 of 2007

Dated this the 17th day of September, 2007

ORDER

These applications are for regular bail and anticipatory bail in a crime registered, inter alia, under Secs.307 and 332 of the IPC. Allegations are raised under Sec.3 of the P.D.P.P. Act also. B.A.Nos.5567 & 5713/07 are filed by accused 1 and 2 for regular bail. B.A.No.5565/07 is filed by accused 5 and 6 for anticipatory bail. The crux of the allegations is that when a police party, on receipt of information of some untoward incident taking place in a locality, reached there, the accused persons formed themselves into an unlawful assembly and indulged in wanton acts of violence against the members of the police party. Stones were thrown at the victims. The police jeep was damaged. Fracture was allegedly suffered by one of the policemen on duty. Crime was registered. Accused 1 and 2 were arrested on 27/8/07 i.e., the date of occurrence itself. They continue in custody from that date. At any rate, they,

who are continuing in custody from 27/8/2007, may now be enlarged on bail subject to appropriate conditions, it is prayed.

2. The learned counsel for accused 5 and 6 i.e., the petitioners in B.A.No.5565/07 submits that the petitioners are absolutely innocent. It is prayed that anticipatory bail may be granted to the petitioners. The learned counsel for the petitioners submits that the petitioners were not anywhere near the locality. Only because of political animosity, the petitioners were falsely arrayed as accused and vexatious allegations are raised against them.

3. Notice was given to the learned Public Prosecutor. The learned Public Prosecutor does not oppose the application for regular bail of accused 1 and 2. The learned Public Prosecutor only submits that appropriate conditions may be imposed in so far as the arrested accused are concerned.

4. So far as the application for anticipatory bail is concerned, the learned Public Prosecutor opposes the same. There are no circumstances justifying the invocation of the extraordinary inherent jurisdiction available under Sec.438 of the Cr.P.C., submits the learned Public Prosecutor.

5. I am satisfied that accused 1 and 2 can be granted regular bail. In the absence of opposition, it is not necessary for me to advert to the facts in any greater detail. Appropriate conditions can, of course, be imposed on those petitioners.

6. I find merit in the opposition by the learned Public Prosecutor against the grant of anticipatory bail. The learned Public Prosecutor has taken me through the Case Diary. The materials show that the policemen on duty have suffered injuries. It is also seen that they were at the scene of the crime in connection with their official duty. In any view of the matter, I am not persuaded to agree that the extraordinary equitable discretion under Sec.438 of the Cr.P.C. can or ought to be invoked. I am satisfied that the petitioners/accused 5 and 6 must resort to the ordinary and normal course of appearing before the Investigating Officer or the learned Magistrate having jurisdiction. They must then seek regular bail in the ordinary course.

7. In the result:

(A) B.A.No.5565/07 is dismissed; but with the observation that if the petitioners surrender before the learned

Investigating Officer or the Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

B. B.A.No.5567 & 5713/07 are allowed. The petitioners/ accused 1 and 2 shall be released on bail on the following terms and conditions:

(i) The petitioners shall execute bonds for Rs.50,000/- each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioners shall make themselves available for interrogation before the Investigating Officer on all Mondays and Fridays between 10 a.m. and 12 noon for a period of two months and thereafter as and when directed by the Investigating Officer in writing to do so.

Sd/-

(R. BASANT, JUDGE)

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//true copy// P.S. to Judge